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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
) CC. Dkt. No. 97-213
Communications Assistance)
for Law Enforcement Act) DA 98-762
)

Comments

With these Comments, the Ameritech Operating Companies¹ and Ameritech Mobile Communications, Inc. (collectively referred to as "Ameritech") respectfully request that the Federal Communications Commission grant a blanket extension of time for telecommunications carriers to comply with the capability requirements contained in Section 103 of the Communications Assistance for Law Enforcement Act (CALEA), (47 U.S.C. sec. 1002), pursuant to Section 107(c)(1) of CALEA. 47 U.S.C. sec. 1006. And, as required in Section 107, these Comments will demonstrate that telecommunications carriers are incapable of complying with the assistance capability requirements of CALEA because there is no technology reasonably available which will allow them to comply. Consequently, Ameritech requests that the Commission grant a blanket extension of time, at least until such time as assistance capability requirements are reasonably available.

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¹ The Ameritech Operating Companies are local exchange carriers that operate in a five state region under the names of Ameritech Illinois, Ameritech Indiana, Ameritech Michigan, Ameritech Ohio and Wisconsin Bell, Inc. d/b/a Ameritech Wisconsin.

I. Introduction

On April 20, 1998, the Commission issued a Public Notice requesting comments on several petitions requesting the Commission grant extensions of time on the CALEA compliance requirement.²

The Ameritech Operating Companies are local exchange carriers providing telecommunications services to business and residential customers primarily within the states of Illinois, Indiana, Michigan, Ohio and Wisconsin. The Ameritech Operating Companies are "telecommunications carriers" as that term is defined in Section 102(8)(A) of CALEA. 47 U.S.C. sec. 1001(8)(A). Ameritech Mobile Communications, Inc. provides commercial mobile radio service to both business and residential customers within the United States. Ameritech Mobile Communications, Inc. is a "telecommunications carrier" as that term is defined in Section 102(8)(B)(i) of CALEA. 47 U.S.C. sec. 1001(8)(B)(i). Thus, Ameritech is obligated to comply with the capability requirements under Section 103 of CALEA, which has an effective date of October 25, 1998. *See* 47 U.S.C. sec. 1002.

In these Comments, Ameritech demonstrates that there is substantial evidence supporting a blanket extension of time for all affected carriers. Clearly, the Commission has the authority for administrative efficiency to recognize that all telecommunications carriers are similarly situated, and thus equally deserving of an extension of time.

² *See* In the Matter of Communications Assistance for Law Enforcement Act. CC Dkt. No. 97-213, DA 98-762, released April 20, 1998.

II. Extensions of Time are Permitted Under Section 107

Section 107 of CALEA permits the Commission to grant an extension of time to telecommunications carriers requesting such an extension. Specifically, Section 107(c)(1) provides that:

[a] telecommunications carrier proposing to install or deploy, or having installed or deployed, any equipment, facility, or service prior to the effective date of section 103 may petition the Commission for 1 or more extensions of the deadline for complying with the assistance capability requirements under section 103.

Section 107(c)(2) then provides that an extension may be granted

if the Commission determines that compliance with the assistance capability requirements under section 103 is not reasonably available through application of technology available within the compliance period.

Section 107 also requires the Commission to consult with the Attorney General as part of the extension process.

Based on this language, telecommunications carriers should receive an extension of time if they demonstrate to the Commission that: 1) technology necessary to comply with the capability assistance requirements is not reasonably available; and 2) technology will not be available within the time period for compliance.³ As will be demonstrated below, no technology is available for Ameritech, or any other carrier, to deploy in its network

³ However, Section 107 applies only to equipment, facilities, and services which were installed or deployed after January 1, 1995. See 47 U.S.C. sec. 1006(c)(4). Ameritech need not request an extension of time for equipment, facilities, or services which were installed or deployed prior to January 1, 1995, since CALEA provides that that equipment, facilities, and services are deemed in compliance until the Attorney General agrees to reimburse a carrier the costs of complying. 47 U.S.C. sec. 1007(d). While that Section presumes that the carrier has requested payment, Ameritech has no reasonable basis on which to request reimbursement from the FBI, since the technology needed to comply is not available. See Establishment of Technical Requirements and Standards for Telecommunications Carrier Assistance Capabilities Under the Communications Assistance for Law Enforcement Act, Joint Petition for Expedited Rulemaking, Federal Bureau of Investigation and Department of Justice, filed March 27, 1998 ("FBI Petition").

within the compliance period, nor is technology anticipated to be available prior to the compliance date of October 25, 1998.⁴

III. Technology is Not Reasonably Available

Section 103 of CALEA requires telecommunications carriers to expeditiously isolate and enable the government to intercept all wire and electronic communications carried by the carrier and to expeditiously isolate and enable the government to access call-identifying information that is reasonably available to the carrier. 47 U.S.C. sec. 1002(a).

While there is ongoing significant debate about what information this language requires carriers to provide to law enforcement,⁵ substantial evidence exists that there is no existing technology that allows a carrier to meet the requirements of this section. In this regard, the Federal Bureau of Investigation of the Department of Justice ("FBI") filed an Implementation Report ("FBI Report") with Congress on January 26, 1998.⁶ In this FBI Report, the FBI provided a timetable demonstrating that no switched-based solution⁷

⁴ Nothing in the language of Section 107 prohibits the Commission from granting a blanket extension of time. Although the language is written in the singular, the Commission has the authority to recognize that the information applies to all carriers equally.

⁵ See, e.g., Letter from Stephen R. Colgate, Assistant Attorney General for Administration, Department of Justice to Mr. Geoffrey Feiss, Director, State Relations, United States Telephone Association, dated February 3, 1998.

⁶ Communications Assistance for Law Enforcement Act (CALEA), Implementation Report, Federal Bureau of Investigation of the Department of Justice, January 26, 1998.

⁷ The FBI Report distinguishes between a switched-based solution and a network-based solution. The FBI Report defines a switched-based solution as one that modifies the internal switch software as a means to provide the necessary information to law enforcement. The Report defines a network-based solution as one that does not require internal switch software modifications or hardware modifications, but requires only minor configurations changes that are easy to implement and consistent with normal carrier modifications. FBI Report at page 7.

for CALEA compliance would be available by October 25, 1998.⁸ Moreover, while some of the manufacturers of the switched-based solutions could provide a partial solution for CALEA compliance in fourth quarter, 1998, no complete switched-based solution would be available before the year 2000.⁹

The information in this FBI Report is consistent with information Ameritech itself has received from manufacturers. Specifically, in a November 11, 1997 letter, Lucent Technologies listed the potential availability date for the core capability for the 5ESS wireline switched-based solution as the fourth quarter of 1999.¹⁰ However, this core capability does not include certain additional functions requested by the FBI,¹¹ which will require additional time to be incorporated into the solution. Other manufacturers have verbally given similar timing information to Ameritech. Ameritech is not aware of one switch manufacturer that can provide a CALEA capability solution by the 1998 compliance date.

⁸ FBI Report at page 18.

⁹ *Id.*

¹⁰ See Letter from David B. Smith, CALEA -Systems Engineering, Lucent Technologies, to Don Auble, CALEA - Project Manager, Ameritech Corporation, dated November 11, 1997.

¹¹ These additional functions requested by the FBI are the subject of substantial debate between the industry and the FBI. The fact that these functions were not included in the proposed standard caused the FBI to solicit a substantial amount of votes against the proposed standard from other law enforcement agencies, thereby ensuring that the core capability would not become an adopted standard. The additional functions are commonly referred to as the "punch list." Ameritech has not raised this issue in order to argue the merits of those claims in this Petition. Rather, it demonstrates that a solution acceptable to all parties has not been developed.

Furthermore, Lucent Technologies and Ericsson, Inc. have filed their own Petition for Extension of Time with the Commission.¹² In this Petition, Lucent and Ericsson, together with AT&T Wireless Services, Inc., request the Commission to immediately grant an extension of time to comply with CALEA, because they are unable to manufacture and implement an acceptable solution which is consistent with Section 103 of CALEA. Specifically, Lucent and Ericsson state that they have spent significant time and resources developing a solution consistent with the current Interim Standard,¹³ but that they are at a manufacturing development stage in which further development would be a waste of significant resources. In this regard, Lucent and Ericsson point out that the standard is only an Interim Standard, and that the FBI, the Center for Democracy and Technology (“CDT”), and the Telecommunications Industry Association (“TIA”) have filed Petitions arguing that the standard is deficient under Section 107(b) of CALEA.¹⁴ Until such time as the Commission determines what the capability requirements are under

¹² See Petition for Extension of the Compliance Date under Section 107 of the Communications for Law Enforcement Act., AT&T Wireless Services, Inc., Lucent Technologies, Inc., and Ericsson, Inc., March 30, 1998. Because the Petition does not differentiate between wireline and wireless solutions, Ameritech assumes that Lucent’s Petition for Extension includes both its wireline and wireless products. Ameritech Mobile Communications, Inc.’s provides cellular telephone and other wireless services predominately using Lucent’s wireless products.

¹³ Interim Standard, Lawfully Authorized Electronic Surveillance, J-STD-025, TIA TR45.2 and Committee T1, November 20, 1997.

¹⁴ See FBI Petition, *supra* note 2; Communications Assistance for Law Enforcement, Petition for Rulemaking under Sections 107 and 109 of the Communications Assistance for Law Enforcement Act, Center for Democracy and Technology, filed March 26, 1998 (CDT Petition); and Rulemaking Under Section 1006 of the Communications Act of 1934, as amended, and Section 107 of the Communications Assistance for Law Enforcement Act to Resolve Technical Issues and Establish a New Compliance Schedule, Petition for Rulemaking, Telecommunications Industry Association, filed April 2, 1998 (TIA Petition).

CALEA, the manufacturers cannot move forward with further development, except at great risk and expense.¹⁵

Based on the foregoing, there is no disagreement between the manufacturers, the FBI and the telecommunication providers that a switched-based solution for CALEA compliance is not available for telecommunications carriers, and will not be available until the Commission resolves what capability CALEA requires.

The only possible alternative to meeting the CALEA compliance date would be the availability of a network-based solution. Specifically, the FBI Report mentions Bell Emergis' network-based solution as an option to the switched-based solutions.¹⁶ However, beginning in October, 1997, Ameritech worked directly with Bell Emergis to evaluate its product. Ameritech's switch and translations experts thoroughly reviewed and analyzed the Bell Emergis product according to the criteria established by the Interim Standard. Ameritech concluded that Bell Emergis' network-based solution had significant technical problems that would require substantial modification before it could operate with the existing network and be compliant with CALEA. In December, 1997, Ameritech provided Bell Emergis with a written report summarizing its conclusions, and informed the FBI of its conclusion not to move forward with the Bell Emergis solution.¹⁷

¹⁵ See TIA Petition at page 9.

¹⁶ FBI Report at page 11.

¹⁷ Letter to Mr. Michael Warren, Section Chief, CALEA Implementation Section, Federal Bureau of Investigations, from Mr. Don Auble, Director- CALEA Project Manager, Ameritech Corporation, dated December 16, 1997. Ameritech also informed the FBI that Ameritech would not assert any proprietary objections if the FBI requested the written summary report from Bell Emergis.

Except for the Bell Emergis solution -- which is not a viable option -- Ameritech is unaware of any other network-based solution providing CALEA capabilities.

IV. Technology Will Not Be Available by October 25, 1998

In addition to the fact that there is no current technology compliant with the CALEA capability requirements, it is also true that no technology will be available for installation and implementation by October 25, 1998. First, as mentioned above, the Commission needs to resolve several issues about what CALEA capability is required, before manufacturers can develop the necessary solutions.

Second, even when these issues are resolved by the Commission, it will take manufacturers significant time and resources to develop the capabilities and provide a working product to the telecommunications carrier for deployment into the network. In this regard, TIA requests in its Petition that, after the Commission resolves the capability issues, the Commission should establish a compliance period which allows twenty-four (24) months to develop and install the software and equipment necessary to comply with CALEA.¹⁸ Even the Justice Department recognizes that it will take at least eighteen (18) months from the time the CALEA capability issues are resolved before the capability functions can be developed and installed, thereby allowing telecommunications carriers to begin installation to comply with CALEA.¹⁹

¹⁸ TIA Petition at 9.

¹⁹ In a discussion between Congressman Harold Rogers and the Attorney General of the United States, Attorney General Reno admitted that it would take an additional eighteen (18) months to develop CALEA solutions, after the Commission established the capability requirements. See Testimony of the Attorney General before the House Appropriations Subcommittee for Commerce, State, Justice, the Judiciary and Related Agencies, February 26, 1998.

Finally, a complete solution has been delayed because the manufacturers have had no capacity information to build into their capability requirements. The capacity requirements, which are the actual number of interceptions, pen registers, and trap and trace devices that carriers would have to conduct simultaneously, are integral to the development of the CALEA capability requirements. In recognition of this fact, CALEA required that the capacity requirements would be released within one year of the passage of CALEA. 47 U.S.C. sec. 1003(a). Nevertheless, it took the FBI almost three years to finalize the capacity requirements which it released on March 12, 1998. 63 Fed. Reg. 12217. In the interim, manufacturers were left to guess what type of capacity numbers to design into their switch-based solutions, and industry was left to determine how telecommunications carriers can comply with the capability requirements by October 25, 1998, while not complying with the capacity requirements until March 12, 2001.

V. Conclusion

Based on the foregoing, there is substantial information in the record for the Commission to grant a blanket extension of time for complying with CALEA. As fully supported above, the technology to allow telecommunications carriers to comply with CALEA does not currently exist and will not be developed into a viable product prior to the October 25, 1998 deadline. Consequently, as allowed under Section 107 of CALEA,

the Commission should grant a blanket extension of time, until such time as carriers will reasonably be able to install and deploy a complete CALEA solution.

Respectfully submitted,



Barbara J. Kern

Counsel

Ameritech Corporation

4H74

2000 Ameritech Center Dr.

Hoffman Estates, IL 60196

(847) 248-6077

May 8, 1998

CERTIFICATE OF SERVICE

I, Toni R. Acton, hereby certify that I have on this 8th day of May, 1998, caused to be served by first class mail, postage prepaid, or by hand delivery, a copy of the foregoing Comments to the following:

Daniel Phythyon, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M. Street, N.W., Room 5002
Washington, DC 20554

David Wye
Telecommunications Policy Analyst
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M. Street, N.W., Room 5002
Washington, DC 20554

A. Richard Metzger, Chief
Common Carrier Bureau
Federal Communications Commission
1919 M. Street, N.W., Room 500B
Washington, DC 20554

Geraldine Matise
Chief, Network Services Division
Common Carrier Bureau
2000 M. Street, N.W., Room 235
Washington, DC 20554

Kent Nilsson
Deputy Division Chief
Network Services Division
Common Carrier Bureau
2000 M. Street, N.W., Room 235
Washington, DC 20554

David Ward
Network Services Division
Common Carrier Bureau
2000 M. Street, N.W., Room 210N
Washington, DC 20554

Lawrence Petak
Office of Engineering and Technology
Federal Communications Commission
2000 M. Street, N.W., Room 230
Washington, DC 20554

Charles Isman
Office of Engineering and Technology
Federal Communications Commission
2000 M. Street, N.W., Room 230
Washington, DC 20554

Jim Burtle
Office of Engineering and Technology
Federal Communications Commission
2000 M. Street, N.W., Room 230
Washington, DC 20554